

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KIONNE N. SEAL, KAMALLE
N. SEAL, KEVON N. SEAL, and KESHAUN
NATWONN SEAL, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MONIQUE MIRIAM MOORE,

Respondent-Appellant,

and

KEVIN N. SEAL,

Respondent.

In the Matter of KIONNE N. SEAL, KAMALLE
N. SEAL, KEVON N. SEAL, and KESHAUN
NATWONN SEAL, Minors.

DEPARTMENT OF HUMAN SERVICES,

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v

KEVIN N. SEAL,

Respondent-Appellant,

and

MONIQUE MIRIAM MOORE,

UNPUBLISHED

May 12, 2009

No. 288044

Wayne Circuit Court

Family Division

LC No. 05-442575-NA

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Respondent.

Before: Wilder, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the four minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent father claims on appeal that he was denied the constitutional right to counsel when the trial court dismissed his appointed attorney because of respondent father's failure to attend hearings and participate in his treatment plan. The constitutional guarantees of due process and equal protection extend the right to counsel to respondents in termination proceedings. *In re Powers Minors*, 244 Mich App 111, 121; 624 NW2d 472 (2001). However, this Court stated in *In re Nash*, 165 Mich App 450, 458; 419 NW2d 1 (1988) that "before the right to appointed counsel arises in cases such as this, there must be a petition seeking the *permanent* custody of a child or an indication by the probate court that the termination of parental rights -- if such an alternative was not previously considered -- has become a possibility." (Emphasis in original.) In the instant case, respondent father was represented by counsel from the time of the preliminary hearing in May 2005 until September 2006. The petition for termination of parental rights was filed February 4, 2008. Respondent father was re-appointed counsel February 27, 2008, and continued to be represented by counsel from that time, through the termination trial that took place on May 27, 2008, July 15, 2008, and September 9, 2008. Where respondent was provided counsel shortly after termination was sought and was fully represented in the termination trial, he was not denied the constitutional right to counsel.

Respondent father also cites MCR 3.915(B), which requires the court to advise a respondent at the first court appearance of the right to retain an attorney or have one appointed if respondent is financially unable to retain counsel. See also MCL 712A.17c(4)(a), (b), requiring the court to advise respondent at the first court appearance of "the right to an attorney at each stage of the proceeding." Thus the statute and court rule provide a right to counsel that arises before the constitutional right attaches. See *In re Osborne*, 230 Mich App 712, 716; 584 NW2d 649 (1998), vacated on other grounds, 459 Mich 360; 589 NW2d 763 (1999) ("Although the right to court-appointed counsel in all cases is not guaranteed by the United States Constitution, MCR 3.915(B)(1) [now MCR 3.915(B)(1)] mandates the appointment of counsel for all indigent parents in a child protective proceeding.") (Footnotes omitted).

Petitioner correctly notes that a respondent may waive the right to indigent counsel by failing to contact counsel and appear at review hearings. *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991). In *Hall*, however, the parent failed to contact counsel for 16 months, substantially more than the five months in this case. *Id.* Moreover, respondent father was participating, however minimally, in his parent-agency agreement by visiting the children (sporadically), in contrast to the respondent in *Hall*, who was living in Chicago at an unknown address. *Id.* Finally, the trial court's suggestion that full compliance with the parent-agency agreement is a condition for indigent representation is not supported by court rule, statute, or

case law. Irrespective of whether the lack of participation by respondent father resulted in a waiver or relinquishment of the right to counsel, we conclude that any infringement of respondent father's statute and court-rule based right to counsel was harmless in this case. See *Id.* Respondent was represented by counsel at the initial preliminary hearing on May 26, 2005, and representation by counsel continued until approximately 16 months later, when the trial court dismissed his counsel at a dispositional review hearing on September 25, 2006. At that time, respondent father had not appeared before the court for five months. Respondent's contention that he would have been provided services if he had been represented by counsel is wholly unpersuasive. Respondent father was represented by counsel for 14 months after the initial dispositional hearing, and he was provided a service plan with which he complied only minimally. This record does not demonstrate that respondent father would have taken advantage of services during the time he was deprived of counsel, approximately 17 months from September 2006 until February 2008, nor is it clear that the lack of counsel precluded him from doing so.

Both respondents challenge the sufficiency of the evidence for the termination of their parental rights. The trial court did not clearly err by finding at least one statutory ground for termination of respondents' parental rights was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

At the time of adjudication, which included the four children at issue on appeal and seven older children to whom respondents' rights were not terminated, respondent mother admitted that the home was in deplorable condition without adequate furniture, with trash and debris scattered throughout, and with two dirty mattresses on the floor. She further admitted that Korrey, one of the older children, was out of control and that the children had behavioral problems and poor school attendance. Respondent mother did obtain housing with the assistance of Traveler's Aid, approximately 13 months after the adjudication and initial disposition, and in December 2006, four of the older children were returned to her care. However, problems again arose relating to her ability to control the children, as two of the older children were reported to have incorrigibility problems, large quantities of marijuana were found in the home, and the home was again reported to be in deplorable condition. The family was evicted from the home after one of the older children had a confrontation with the landlord, and at the time of the termination trial, respondent mother was living in a shelter. Clearly, respondent mother's lack of suitable housing as well as her inability to control the children continued to exist at the time of the termination trial. MCL 712A.19b(3)(c)(i).

The trial court also did not clearly err by finding that there was no reasonable likelihood that these conditions would be rectified within a reasonable time considering the ages of the children. Although respondent mother obtained suitable housing for a time, she was not able to maintain it despite the extensive services provided. In addition to therapy, parenting instruction, bus passes, and psychological and psychiatric evaluation, respondent mother received in-home services from December 2006 to June 2007, after four of the older children were returned to the home. However, respondent mother lacked the authority to adequately supervise and care for the children, who destroyed the property of the home, including furniture that had been provided for the family. In October 2007, the worker reported that windows were broken out, one of the toilets in the home was broken, the fence in the back yard had been torn down, and garbage was overflowing in the kitchen. The worker reported that family reunification workers provided

respondent mother resources to effectively manage the household, but she did not follow through with the services provided by the agency and the family reunification workers, leaving the agency with the impression “that the family reunification program did not benefit Ms. Moore at all.” Even if respondent mother is able to again secure suitable housing, the record supplies substantial reason to believe that she will not be able to maintain it in safe and suitable condition, or to maintain a safe and suitable, crime and drug free environment in the home, due to her inability to control the older children, who were observed to totally ignore her requests and instructions during visits. Respondent mother’s ability to obtain another house through Traveler’s Aid is also doubtful, since they have declined to assist her based in part on her history with them. Under these circumstances, the trial court did not clearly err by finding that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i).

Termination of respondent mother’s parental rights was also appropriate under MCL 712A.19b(3)(g). Respondent mother failed to provide proper care and custody for the children by failing to provide adequate housing. The same evidence that established that there was no reasonable likelihood that respondent mother would rectify the conditions of adjudication within a reasonable time, MCL 712A.19b(3)(c)(i), equally indicates that there is no reasonable likelihood that she will be able to provide proper care and custody for the children within a reasonable time. MCL 712A.19b(3)(g). Respondent mother argues on appeal that she achieved most of her parent-agency agreement, and indeed the agency reported in September 2006, that she had completed her treatment plan, and four of the older children were returned to her care. However, respondent mother unfortunately has demonstrated an inability to *maintain* safe and suitable housing, a critical element of the agreement. This court has noted that a parent must not only comply with a parent-agency agreement, but must also demonstrate benefit from it. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). The events of this case demonstrated that respondent mother did not adequately benefit from the extensive services provided.

The minor children argue on appeal that termination was improper because the agency should have explored respondent mother’s medical condition and assisted her with it. Appellate counsel for the children relies on *In re Woodall, Minor*, unpublished opinion per curiam of the Court of Appeals, issued October 21, 2008 (Docket No. 283185), in which the mother’s stroke-induced disability was to be addressed as a major component of the parent-agency agreement. The agency provided no rehabilitative services to the mother in that case, and this Court found that its efforts toward reunification had been inadequate. *Id.* at slip op, pp 2-3. In this case, by contrast, the agency provided extensive services to respondent mother throughout the case. The instant case is fundamentally different from *In re Woodall*, where it appeared that the respondent mother’s stroke-induced disability was the primary impediment to reunification. *Id.* at slip op, p 3. In this case, the very same issues that existed at the time of adjudication, before respondent’s health condition arose, continued to exist at the time of termination. Finally, respondent mother has not requested accommodation or special assistance, except in requesting a delay of the return of the children, which the trial court granted. See *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000) (claim that agency is violating ADA must be timely raised so that reasonable accommodations can be made). The record indicates that respondent was receiving medical treatment, and Medicaid covered her prescriptions. We conclude that this issue warrants no relief on appeal.

The primary condition of adjudication, lack of adequate housing, also continued to exist with respect to respondent father, who was living with his grandmother at the time of the termination trial. MCL 712A.19b(3)(c)(i). Respondent father argues that it is unacceptable and improper to terminate parental rights merely because a parent does not have independent housing, noting that in most countries it is traditional to live with parents and grandparents. This argument, while certainly valid, does not address the facts of this case, where respondent father never put forth his grandmother's home as suitable for the children, and indeed indicated even while the trial was pending that he had no fixed address, but was living with his grandmother and with friends.¹ The trial court also did not clearly err by finding that there was no reasonable likelihood that respondent father's lack of suitable housing would be rectified within a reasonable time considering the ages of the children, *id.*, where respondent father was in the same position at the termination trial as at the time of adjudication approximately three years earlier. The trial court's conclusion finds further support in respondent father's testimony on August 20, 2008, that he was not working, had an income of \$362 per month, and was continuing to smoke marijuana at that time.

Termination of respondent father's parental rights pursuant to MCL 712A.19b(3)(g) was also proper. Like respondent mother, respondent father failed to provide proper care and custody for the children by failing to provide them with adequate housing. Further, the evidence showing that there is no reasonable likelihood that respondent father will rectify the conditions of adjudication within a reasonable time, MCL 712A.19b(3)(c)(i), equally demonstrates that there is no reasonable likelihood that he will be able to provide proper care and custody for the children within a reasonable time considering their ages. MCL 712A.19b(3)(g). Respondent father complied with the parent-agency agreement minimally, completing only parenting classes, a Clinic for Child Study evaluation, and visiting inconsistently with the children. Respondent father's failure to carry out critical components of his treatment plan, including obtaining housing and employment and participating in therapy, supplies further evidence of his inability to provide proper care and custody for the children. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Under these circumstances, we are left with no impression that the trial court made a mistake by finding that respondent father would not be able to provide proper care and custody for the children within a reasonable time considering their ages. *In re Terry*, *supra* at 22.

Finally, both parties challenge the trial court's finding that termination was in the best interests of the child. MCL 712A.19b(5). The trial court's decision regarding the child's best interests is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 365-366; 612 NW2d 407 (2000). In this case, the trial court weighed the possible damage that could be caused by

¹ Respondent father also contends that if he had been continuously represented by counsel throughout the proceedings, counsel would likely have instructed him to seek evaluation of his grandmother's home as a suitable residence for respondent father and the children. This argument loses any potential merit when one notes that during the substantial periods of time when respondent father was represented by counsel (i.e., during the 14 months following adjudication and disposition, and during the six months preceding the termination order), there is no evidence that he ever put forth his grandmother's residence as suitable for himself and the children.

termination against the children's need for stability. The court felt that the circumstances of the children "cry out" for more stability than they would have if this case were continued.

The factors weighing against termination are significant, and the attorneys for the children advocated against termination. The children have a positive bond with respondent mother and with each other, as well as with their older siblings to whom the respondents' parental rights have not been terminated. However, the factors weighing in favor of termination are also significant. These children were found to be living in deplorable conditions requiring intensive intervention in 2002. Respondent mother received services until September 2003. Yet, by early 2005, the family was again living in deplorable conditions resulting in the removal of the children. Respondent mother was able to obtain housing during these proceedings with the assistance of Traveler's Aid, but she was not able to maintain it and at the time of the termination trial was living in a shelter. Respondent mother continued to demonstrate a lack of ability to exert authority over the children, as the older children were observed to totally ignore her requests during supervised visits. The incorrigible behavior of the older children in turn contributed to respondent mother's inability to maintain a suitable home for the four children involved in this appeal, as there were large quantities of marijuana in the home and one of the older children engaged in a confrontation with the landlord that resulted in the family's eviction. We are compelled to agree with the trial court's observation that the circumstances of these children cry out for stability, and that the continuation of this case seems unlikely to provide the stability that they need. There is no indication when either of the parents would obtain housing or that they would be able to offer the stability and permanence that the children need within a reasonable time.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood